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In re Application	:
Dodo, et al.	:
Application No. 09/715,036	: DECISION ON APPLICATION
Filed: November 20, 2000	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. 077281-0104	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §§ 1.705", filed August 30, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to fifty-two (52) days.

The application for patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **fifty-two (52) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 2, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On August 30, 2004, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is fifty-two (52) days.

Applicants assert entitlement to a patent term adjustment of fifty-two (52) days on the basis that the PTO improperly assessed Applicants a delay of one hundred thirteen (113) days for responding to a Notice to File Missing Parts mailed on January 19, 2001. Applicants assert that they filed a complete response on May 18, 2001, and as such should only have been assessed delay of twenty-nine (29) days.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of two hundred (200) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicants' delays of one hundred thirteen (113), twenty-eight (28), and ninety-one (91) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of one hundred thirteen (113) days is at issue.

The adjustment of one hundred thirteen (113) days has been found to be incorrect. A review of the application file reveals that a Notice to File Missing Parts of Nonprovisional Application was mailed on January 19, 2001. Applicants filed a complete response to this notice on May 18, 2001. As this was not timely pursuant to 37 C.F.R. § 1.704(b), applicant delay of twenty-nine (29) days should have been assessed, not one hundred thirteen (113) days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **fifty-two (52) days** (200 days of PTO delay, reduced by 148 (91+28+29) days of applicant delay).

Receipt of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter
yes

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen